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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 TAWNDRA L. HEATH,

8 Plaintiff,

9 v.

10 TRISTAR PRODUCTS, INC., et al.,

11 Defendants.

Case No. 2:17-cv-02869-GMN-PAL

ORDER

(Mot. to Seal – ECF No. 47)

12 This matter is before the court on Plaintiff Tawndra L. Heath's Motion to Seal (ECF
13 No. 47). This Motion is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR
14 IB 1-3 of the Local Rules of Practice.

15 The Motion seeks leave to file under seal all 12 exhibits submitted in support of Plaintiff's
16 Motion for Leave to File Second Amended Complaint (ECF No. 46):¹

- 17 • Exhibit 1: Plaintiff's First Set of Requests for Production of Documents to Defendant Tristar;
18 • Exhibit 2: Email Correspondence from Plaintiff's Counsel, Joshua Dowling, Esq. to
19 Defendant Tristar's Counsel, Michael Lopes, Esq, dated March 20, 2018 and March 28,
20 2018, respectively;
21 • Exhibit 3: Defendant Tristar's Responses to Plaintiff's First Set of Requests for Production
22 of Documents;
23 • Exhibit 4: Email Correspondence between Defendant Tristar's Counsel, Alexandria Layton,
24 Esq. and Plaintiff's Counsel, Joshua A. Dowling, Esq., dated from March 26, 2018 through
25 April 22, 2018;
26 • Exhibit 5: Correspondence from Defendant Tristar's Counsel, Alexandria Layton, Esq. to
27 Plaintiff's Counsel, Joshua Dowling, Esq. dated June 12, 2018;
28 • Exhibit 6: Email Correspondence between Defendant's Tristar's Counsel, Alexandria
Layton, Esq., dated March 26, 2018 through June 18, 2018;
• Exhibit 7: Email Correspondence between Defendant Tristar's Counsel, Alexandria Layton,
Esq. and Plaintiff's Counsel, Joshua Dowling, Esq. from March 26, 2018 through June 19,
2018;

¹ The Motion states, "Plaintiff *will file* the exhibits that Defendant has marked as confidential under seal." Mot. at 2 (emphasis added). However, all 12 exhibits were filed on the public docket with the Motion.

- 1 • Exhibit 8: Correspondence from Defendant Tristar’s Counsel, Alexandria Layton, Esq. to
2 Plaintiff’s Counsel, Joshua Dowling, Esq. regarding Defendant Tristar’s Supplemental
3 Responses to Plaintiff’s Requests for Production of Documents, dated June 22, 2018;
- 4 • Exhibit 9: Consumer Complaint, Bates Stamp Nos. HEATHTRISTAR0000611-612, dated
5 August 18, 2016;
- 6 • Exhibit 10: Inspection and Testing Report, Bates Stamp Nos. HEATHTRISTAR00000730-
7 731; HEATH-TRISTAR00001880-1882; HEATH-TRISTAR00002932-2934; HEATH-
8 TRISTAR0000612; HEATH-TRISTAR00000608; HEATH-TRISTAR00000653, HEATH-
9 TRISTAR00001681; HEATH-TRISTAR00001936-1937, and HEATH-
10 TRISTAR00002271-2272;
- 11 • Exhibit 11: Owner’s Manual for Power Pressure Cooker PPC770, Bates Stamp Nos.
12 HEATH-TRISTAR00004562-4581; and
- 13 • Exhibit 12: Plaintiff’s Proposed Second Amended Complaint.

14 Plaintiff asserts that good cause exists for sealing the 12 exhibits because Defendant TriStar
15 Products, Inc. (“TriStar”) has designated such documents “confidential” and the court entered the
16 parties’ Stipulated Protective Order (ECF No. 34). Quoting *Phillips v. General Motors Corp.*, 307
17 F.3d 1206, 1213 (9th Cir. 2002), Plaintiff claims, “when a district court grants a protective order
18 to seal documents during discovery, ‘it already has determined that good cause exists to protect
19 this information from being disclosed to the public by balancing the needs for discovery against
20 the need for confidentiality’.”

21 As a general matter, there is a strong presumption of access to judicial records. *Kamakana*
22 *v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). A party who designates
23 documents confidential is required to meet the standards articulated by the Ninth Circuit in
24 *Kamakana* to overcome the presumption of public access to judicial records, motions, and exhibits.
25 *See also Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092 (9th Cir. 2016) (legal standard
26 applied to sealing requests turns on the relevance of the documents to the substantive merits of a
27 case—not on the relief sought). Under *Kamakana* and its progeny, a party must make a
28 particularized showing to overcome the presumption of public accessibility. 447 F.3d at 1178–79.

Stipulated protective orders typically require the parties to file documents under seal when
they contain confidential or otherwise sensitive business information. *IMAX Corp. v. Cinema*
Tech., Inc., 152 F.3d 1161, 1168 n.9 (9th Cir. 1998); *In re Dual-Deck Video Cassette Recorder*
Antitrust Litig., 10 F.3d 693, 694 (9th Cir. 1993). However, such orders alone do not justify sealing
court records. *See, e.g., Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir.

1 2003) (noting that reliance on a blanket protective order, without more, will not make a showing
2 of good cause); *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 475–76 (9th Cir. 1992)
3 (explaining that blanket stipulated protective orders are over inclusive by nature and do not include
4 a finding of “good cause”). Blanket protective orders are designed to facilitate discovery
5 exchanges; they do not provide a finding that any specific documents are secret or confidential to
6 overcome the presumption of public access. *Kamakana*, 447 F.3d at 1183 (addressing the “the
7 hazard of stipulated protective orders,” and noting they often “purport to put the entire litigation
8 under lock and key without regard to the actual requirements of Rule 26(c)”).

9 Because a blanket protective order does not contain a particularized finding to keep any
10 specific document confidential, the mere fact that a court has entered a blanket protective order,
11 and that a party has designated a document confidential pursuant to that protective order, does not
12 establish cause for sealing a particular document. *Foltz*, 331 F.3d at 1133; *Beckman Indus.*, 966
13 F.2d at 475–76. The party designating any document(s) as confidential must submit a
14 memorandum of points and authorities presenting articulable facts that identify the interests in
15 favor of the documents’ continued secrecy and showing that those specific interests outweigh the
16 public’s interests in transparency. The mere fact that one party designated information as
17 confidential under a protective order does not satisfy this standard.

18 Plaintiff may not simply rely on the Stipulated Protective Order (ECF No. 34) to justify
19 sealing documents filed in the record under seal. The court entered the stipulated protective order
20 to facilitate discovery disclosures. The parties did not show and the court did not find that any
21 specific document was secret, confidential or entitled to be filed under seal. The court appreciates
22 that the Motion was filed to comply with Plaintiff’s counsel’s obligation to abide by the stipulated
23 protective order. However, a statement that the court has already has determined that good cause
24 exists based upon entry of the stipulated protective order is legally incorrect, and does not establish
25 good cause for sealing the subject documents.

26 Additionally, only those portions of the exhibits that contain specific reference to
27 confidential documents or information, and the exhibits that contain such confidential information,
28 should be filed under seal. *In re Roman Catholic Archbishop of Portland*, 661 F.3d 417, 425 (9th

1 Cir. 2011); *Foltz*, 331 F.3d at 1137. The remainder of the motion and/or other exhibits that do not
2 contain confidential information, should remain publicly-accessible documents. Here, it does not
3 appear that Plaintiff's counsel attempted to narrowly tailor the sealing request as the Motion seeks
4 leave to file the entirety of all 12 exhibits under seal. Only two of the 12 exhibits appear to be
5 designated as "confidential" by TriStar, Exhibits 9 and 10. Additionally, Plaintiff's sealing request
6 includes the proposed second amended complaint, which is not a discovery document. Neither the
7 original Complaint (ECF No. 1-1) nor the First Amended Complaint (ECF No. 17) were filed
8 under seal. Plaintiff provides no explanation for the request to seal the proposed second amended
9 complaint.

10 The court will allow Plaintiff's exhibits to be sealed temporarily so the parties and their
11 counsel may confer about what, if any, portions of the should be sealed. The party who designates
12 a particular document confidential is required to meet the standards articulated in *Kamakana* and
13 its progeny. If the designating party determines a filing or portion thereof should remain sealed,
14 that party will be required to file an appropriate memorandum of points and authorities on or before
15 **October 2, 2018**, making a particularized showing why the documents should remain under seal.
16 Pursuant to *Kamakana* and its progeny, any memorandum of points and authorities or motion to
17 file under seal must set forth either good cause or compelling reasons to support the sealing request.

18 Accordingly,

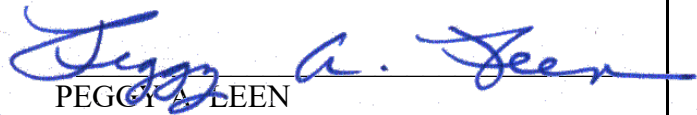
19 **IT IS ORDERED:**

- 20 1. The Clerk of the Court shall SEAL the Exhibits (ECF Nos. 46-1 to 46-12) attached to
21 Plaintiff's Motion for Leave to File Second Amended Complaint (ECF No. 46).
- 22 2. Exhibits (ECF Nos. 46-1 to 46-12) shall remain under seal until **October 4, 2018**.
- 23 3. With respect to filing documents under seal, the parties must comply with: (i) the Local
24 Rules of Practice regarding electronic filing and filing under seal, (ii) the Ninth
25 Circuit's opinions in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th
26 Cir. 2006), and its progeny, and (iii) the appropriate CM/ECF filing procedures.
- 27 4. The parties shall have until **October 4, 2018**, to CONFER about what, if any, portions
28 of the exhibits should remain sealed and FILE either: (i) an appropriate memorandum

1 of points and authorities indicating the documents should remain under seal, or (ii) a
2 notice indicating that the documents do not require sealing.

- 3 5. To support any sealing request, the *memorandum of points and authorities* must make
4 a *particularized* showing why the document(s) or redacted portion thereof should
5 remain under seal. The memorandum may also include a supporting declaration or
6 affidavit, a proposed order granting the motion to seal, and, if applicable, a proposed
7 redacted version of the filing.
- 8 6. Any party asserting confidentiality must file a memorandum of points and authorities
9 on or before **October 4, 2018**. If no memorandum of points and authorities is timely
10 filed in compliance with this Order, the Clerk of the Court will be directed to unseal
11 the documents to make them available on the public docket.

12 Dated this 20th day of September, 2018.

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14 PEGGY A. LEEN
15 UNITED STATES MAGISTRATE JUDGE
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